

Amend Section 42-701.2(1) to read:

42-701 INTRODUCTION TO WELFARE-TO-WORK

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.2 Definitions for Terms Used in This Chapter (Continued)

(1) (Continued)

(2) “Learning Disabilities” means a heterogeneous group of disorders manifested by significant difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities.

These disorders are intrinsic to the individual and presumed to be due to central nervous system dysfunction. Even though a learning disability may occur together with other handicapping conditions (e.g., sensory or mental impairment); or environmental retardation, social and/or emotional disturbance influences (e.g., cultural differences, insufficient/inappropriate instruction, psychogenic factors); it is not the direct result of those conditions or influences.

For the purposes of the CalWORKs Welfare-to-Work program, these disorders interfere with the participant’s ability to obtain or retain employment or to participate in welfare-to-work activities.

Authority Cited: Sections 10531, 10553, and 10554, Welfare and Institutions Code.

Reference: Section 8172, Education Code; Sections 10063, 10800, 11320, 11320.3(b)(3)(A), 11322.6, 11322.9, 11324.6, 11324.8, 11325.21, 11325.25, 11331.5, 11495, 11495.1, 11495.12, and 13280, Welfare and Institutions Code; and Sections 15365.50 and 15365.55, Government Code; and 42 U.S.C. 603(A)(5).

Adopt new Section 42-722 to read:

42-722 LEARNING DISABILITIES PROTOCOLS AND STANDARDS 42-722

.1 CalWORKs Welfare-to-Work Learning Disabilities Screening Requirements

- .11 Counties must offer CalWORKs welfare-to-work participants a screening for learning disabilities at the first welfare-to-work contact (i.e., orientation or appraisal) or by no later than the assessment as described in Section 42-711.55.
- .12 Counties that choose to offer a screening for learning disabilities later than the first welfare-to-work contact must still provide information about the screening at the first welfare-to-work contact, including a description of the screening and the purpose and benefits of the screening.
- .13 For purposes of Sections 42-722.11 and 42-722.12, counties must offer a screening for learning disabilities or provide the information about the screening verbally and in writing.
- .14 Participants who request or agree to a learning disabilities screening must be screened by the county before they are assigned to another welfare-to-work activity.
- .15 Counties must offer current CalWORKs welfare-to-work participants who were not previously offered a learning disabilities screening under Section 42-722.11, the opportunity to be screened by September 3, 2003, or the first time one of the following events occur, whichever is earlier:
 - .151 Individuals have a suspected learning disability as identified by the county, welfare-to-work contractor, other service provider, or participant;
 - .152 Individuals are in the good cause determination process, as described in Section 42-721.24, the compliance process, as described in Section 42-721.2, or the sanction process, as described in Section 42-721.4; or
 - .153 Individuals are failing to maintain satisfactory progress in their assigned welfare-to-work activities, including employment.
- .16 For limited-English proficient CalWORKs welfare-to-work participants for whom no recognized and validated learning disabilities screening tools exist, as required by Section 42-722.42, the county must determine whether a learning disability may exist through discussions with, and/or observations of, the participants.
 - .161 For the purposes of Section 42-722.16, the county shall determine whether limited-English proficient CalWORKs welfare-to-work participants may have a learning disability within the time frames cited in Sections 42-722.11 and .15.

.162 If the county determines that a limited-English proficient CalWORKs welfare-to-work participants may have a potential learning disability, the county must refer the participant to a learning disabilities evaluation in accordance with Section 42-722.5.

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.2 To help put the client at ease about the learning disabilities screening/evaluation, the county should offer an explanation regarding:

.21 The indicators/facts of a learning disability (e.g., the difference between learning disabilities and mental retardation);

.22 The areas that will be tested (e.g., aptitudes, information processing, achievement, and vocational interests), who will perform the testing, and how long the evaluation can be expected to last; and

.23 The types of reasonable accommodations that are available (e.g., information on adaptive technology and work accommodations).

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.3 Participants who decline the learning disabilities screening/evaluation

.31 When the participant declines the learning disabilities screening referenced in Section 42-722.1 and/or the evaluation referenced in Section 42-722.5, the county must:

.311 Inform the participant that his/her welfare-to-work activities will not include any accommodations for a learning disability; and

.312 Inform the participant that he/she may ask for a learning disabilities screening and/or evaluation at a later time; and

.313 Review the waiver of the learning disabilities screening and/or evaluation with the participant and have the participant sign the waiver.

(a) A participants' refusal to sign the waiver is equivalent to a signed waiver when documented by the county in the case file.

.32 The county must not sanction a participant solely on the basis of his/her refusal to be screened and/or evaluated for learning disabilities.

.321 Should a participant decline to be screened or evaluated, and subsequently refuse or fail to comply with program requirements, or to make satisfactory progress in his/her assigned activity, the participant shall not have good cause on the basis of being learning disabled for failing to comply with program requirements or make satisfactory progress, and shall be subject to the compliance and sanction requirements in accordance with Sections 42-721.2 and 42-721.4, respectively.

.33 Should the participant decline the learning disabilities screening and/or evaluation as described in Section 42-722.31, and request a learning disabilities screening and/or evaluation at a later time, the county must provide the screening and evaluation as soon as administratively possible.

.331 If the evaluation identifies the existence of a learning disability, the welfare-to-work assignment will be modified to provide appropriate services and accommodations to address the learning disability on a prospective basis only.

.4 Providing Learning Disabilities Screening

.41 The county may choose who will administer the learning disabilities screening tool.

.411 Counties must select screeners for potential learning disabilities who have:

- (a) The training to appropriately administer the screening tool; and
- (b) To the degree possible, a working relationship with the participant (e.g., county employment case managers, social workers, and eligibility workers; and contracted service providers, etc.).

.412 Counties may contract with trained, qualified learning disabilities professionals to administer the screening tool.

.42 Counties must use only recognized and validated learning disabilities screening tools, if a validated tool exists in the participant's primary language.

.5 Referral Process for Disabilities Evaluation

.51 In accordance with Section 42-711.58, counties must refer CalWORKs participants who have a suspected learning disability for a learning disabilities evaluation. These participants include, but are not limited to, individuals who:

.511 Have been identified as having a potential learning disability, based on the learning disabilities screening tool score;

.512 Were previously identified as having learning problems (e.g., in Special Education classes in grades kindergarten through 12); or

- .513 Are suspected of having a learning disability, even though the results from the learning disabilities screening did not indicate a potential learning disability.
- .52 If a participant declines the learning disabilities evaluation, the county must inform the participant of how his/her welfare-to-work assignment will be affected as provided in Section 42-722.31.
- .53 If a participant agrees to an evaluation, the county must refer him/her to the evaluation as soon as administratively possible.
- .54 Participants who are screened prior to the assessment described in Section 42-711.55 and are found to have a potential learning disability must be evaluated prior to, or concurrently with, the assessment.
- .55 Counties must use trained, qualified learning disabilities evaluation professionals who use recognized and validated learning disabilities evaluation tools to identify learning disabilities and to determine the appropriate accommodations for individuals with learning disabilities.
- .551 Learning disabilities evaluation professionals may include county staff who have the necessary training as learning disabilities specialists to administer and interpret validated test instruments.
- .552 The county may contract with qualified learning disabilities evaluation professionals to perform the evaluations.

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- .553 Learning disabilities evaluation professionals with whom the county may contract include, but are not limited to, qualified individuals from the following sources:
- (a) Professional private/corporate contractors or providers;
 - (b) Trained and qualified staff at community/state colleges or universities;
 - (c) Trained and qualified staff from community-based organizations that serve individuals with learning disabilities;
 - (d) Trained and qualified staff from adult educational facilities, or
 - (e) Staff from the Department of Rehabilitation.

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- .554 If no recognized and validated evaluation tools exist in the participant's primary language, the learning disabilities evaluation professional, utilizing

appropriate bilingual and/or bicultural staff, as necessary, must determine if a learning disability exists through:

(a) Discussions with, and/or observations of, the participant; and/or

(b) The use of other evaluation tools that may provide pertinent information.

.555 If a county staff person, service provider, learning disabilities professional, or the participant suspects that the participant suffers from another impairment that may be a barrier to participation (i.e., a health or behavioral health problem), in addition to or instead of a learning disability, the county also shall refer the participant to a professional who is licensed to diagnose that impairment.

.6 Learning Disabilities Evaluation Report

.61 The learning disabilities evaluation report, at a minimum, shall include the following core information:

.611 Relevant vocational/educational background and history;

.612 General aptitude/cognitive level;

.613 Other issues, such as, physical/mental problems;

.614 Areas of strength;

.615 Areas of deficit;

.616 A summary of the participant's condition and service needs (including severity of disability; areas of potential impact, including employment and participation in welfare-to-work activities; rationale for learning disabilities determination/diagnosis; and recommendations for additional services, as appropriate); and

.617 Range of recommended accommodations/assistive technology to be included in the participant's welfare-to-work plan.

.62 The learning disabilities evaluation report may include, but is not limited to, the following optional information:

.621 Identification of local resources to assist recipients;

.622 Documentation of accommodation/assistive technology needs for other purposes (e.g., driver's license exam, GED exam); and

.623 Discussion of participant's short/long-term employment goals and general/specific vocational recommendations to the extent that the evaluator is qualified to address these issues.

(a) If the learning disabilities evaluation report does not include a written discussion of the participant's short/long-term employment goals and general/specific vocational recommendations, the county will need to ensure that these issues are addressed in the assessment process as described in Section 42-711.55.

.63 County Response to the Learning Disabilities Evaluation Report

.631 If the learning disabilities evaluation report establishes that the participant does not have a learning disability or other disability that interferes with obtaining or retaining employment or participating in the CalWORKs program:

(a) The county must inform the participant of the findings;

(b) The participant must begin/resume his/her welfare-to-work assignment; and

(c) The county must inform the participant that he/she will not be provided special accommodations while participating in his/her welfare-to-work assignment, since it was determined that he/she did not have a learning disability.

.632 If the learning disabilities evaluation report establishes that the participant has a learning disability that interferes with obtaining or retaining employment or participating in a CalWORKs program, the county must:

(a) Provide a copy and an explanation of the evaluation report results to the participant, including any recommendations for reasonable accommodations identified in the evaluation;

(b) Discuss the appropriate welfare-to-work activities and reasonable accommodations needed to help the participant be successful in completing his/her welfare-to-work activities; and

(c) As necessary, develop or modify the welfare-to-work plan in accordance with Section 42-711.63 to reflect appropriate welfare-to-work activities and necessary reasonable accommodations based on the results of the assessment, the learning disabilities evaluation, and discussions between the county and the participant.

.64 Counties must treat participants' medical records and written learning disabilities evaluations as confidential documents that should only be shared with other

counties, other learning disabilities evaluators, outside agencies, and welfare-to-work partner agencies on a “need-to-know” basis.

.641 Counties must obtain the participant’s written consent to share this information with individuals or organizations outside of the county welfare department.

.7 Learning Disabilities Participation Requirements

.71 If the learning disabilities evaluation report includes a recommendation that an individual be temporarily assigned to fewer hours of participation as a reasonable accommodation, counties should examine the following options:

.711 Counties should first explore with the individual any options that would allow fewer hours of participation in the individual’s primary activity, supplemented with hours in other allowable activities that will enable the individual to fully meet his/her work participation requirements.

(a) Supplemental activities must be supportive of the participant’s employment goals and consistent with the learning disabilities evaluation and welfare-to-work plan.

(1) These activities may include, but are not limited to, remedial training, literacy tutoring, and if allowable under the county’s CalWORKs plan or as a reasonable accommodation, study time for participants who are in educational programs that are not self-initiated.

.712 Counties may allow fewer hours of participation in welfare-to-work activities when good cause exists based on a county’s determination that a condition, or other circumstances, temporarily prevents or significantly impairs an individual’s ability to be regularly employed or participate in WTW activities in accordance with Section 42-713.3.

.8 Identifying Participants With Learning Disabilities During Good Cause Determination, Compliance Process and/ or Stopping of a Welfare-to-Work Sanction

.81 If a learning disability is confirmed through an evaluation during a participant’s good cause determination or compliance process, the county must determine if the disability contributed to the participant’s failure to participate.

.811 If the county cannot determine if the disability contributed to the participant’s failure to participate, the county will consult with the learning disabilities evaluator or another learning disabilities specialist to make the determination.

.82 If it is determined that the learning disability diminished the participant’s ability to participate:

.821 The participant shall be considered to have good cause for his/her failure to participate;

.822 The participant shall not be considered to have an instance of noncompliance in accordance with Section 42-721.43; and

.823 As necessary, the county shall also review the welfare-to-work plan and modify it in accordance with Section 42-722.632(c).

.83 If a learning disability is confirmed through an evaluation for an individual who is attempting to stop his/her welfare-to-work sanction, the county will determine whether the learning disability was a contributing factor to his/her noncompliance.

.84 If the learning disability was a contributing factor to the individual's noncompliance:

.841 The county will rescind the sanction and issue any benefits to which the individual is eligible: and

.842 As necessary, the county will review the welfare-to-work plan and modify it in accordance with Sections 42-722.632(c).

.9 Retrospective Adjustment of the 18- and 24-Month Time Clock

.91 Counties must retrospectively adjust an individual's 18- or 24-month time clock when the participant meets all of the following criteria:

.911 Has a verified learning disability;

and

.912 One of the following:

(a) Was not screened and evaluated for learning disabilities before signing the WTW plan; or

(b) Was screened by the county, evaluated, and found to have a learning disability;

and

.913 Both of the following:

(a) Signed a welfare-to-work plan; and

(b) Participated in welfare-to-work activities, but without appropriate accommodations for his/her learning disabilities;

and

.914 Did not make satisfactory progress or benefit from the WTW activities.

.92 When a participant meets the criteria in Section 42-722.91, the county will do the following:

.921 Credit back one full month to the 18- or 24-month time clock for every partial or full month that the individual participated in WTW activities without appropriate accommodations and did not make satisfactory progress or benefit from his or her WTW activities;

.922 Provide him/her with written notice of the number of months credited back to his/her 18- or 24-month WTW time clock, the number of months remaining on his/her 18- or 24-month time clock, and the reason for the adjustment; and

.923 Amend his/her WTW plan to include appropriate WTW activities, services and/or accommodations.

.93 Participants who refuse to be screened, evaluated, or accommodated are not eligible on the basis of a learning disability for an adjustment of their 18- or 24-month time clocks.

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.94 Existing CalWORKs policies governing the 60-month time limit are unaffected by the retrospective adjustment of the 18- or 24-month time clock, pursuant to Sections 42-722.92 and .93.

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.95 If a welfare-to-work participant with an identified learning disability moves from one county to another:

.951 The first county must, with the participant's written permission, forward a copy of the written learning disabilities evaluation to the second county.

.952 The second county must develop a new, or modify the existing, welfare-to-work plan to reflect appropriate welfare-to-work activities and necessary reasonable accommodations based on the results of the assessment, if necessary, the learning disabilities evaluation, and discussions between the county and the participant.

.953 The participant shall not have good cause for failure to participate in the second county, based on the second county's failure to provide services and accommodations that are identified in the learning disabilities evaluation report as being necessary for the participant, when the participant refuses permission for the first county to forward the report.

Authority Cited: Section 10553, Welfare and Institutions Code.

Reference: Sections 10850, 11320.3(f), 11322.8, 11325.2(a), 11325.25, 11325.4, 11325.5, 11327.4, 11327.5, and 11454(a) and (b), Welfare and Institutions Code.